HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.206 of 2007

Between:

Surapaneni Subhas Chandra Bose alias SSC Bose … Appellant

And

Chief Passport Officer,
Ministry of External Affairs,
New Delhi and two others. … Respondents

::J U D G M E N T ::

Counsel for the appellant : Sri Venkateswarlu Posani

Counsel for respondent Nos.1 and 2 : Sri A. Rajashekar Reddy, Assistant Solicitor General.

Counsel for respondent No.3 : Government Pleader for Home.

5th March, 2007

Per G.S. Singhvi, C.J.

Whether the appellant could be denied passport on grounds other than those specified in Section 6 of the Passports Act, 1967 (for short, 'the Act') is the question which arises for determination in this appeal filed against order dated 11-12-2006 passed by the learned Single Judge in Writ Petition No.19011 of 2006, whereby she rejected the appellant's prayer for quashing orders dated 13-6-2005 and 1-8-

2006 passed by Regional Passport Officer, Secunderabad (respondent No.2) and Chief Passport Officer, New Delhi (respondent No.1) respectively.

The appellant is practising as an advocate at Vijayawada and is also the President of the Andhra Pradesh Civil Liberties Committee (APCLC). On 13-7-2004, he applied for issue of passport for going to United States of America to meet his second son and daughter-in-law. Respondent No.2 asked the appellant to furnish some information regarding the criminal case pending against him and then called for a report from Commissioner of Police, Vijayawada (respondent No.3). The latter sent the required report vide letter No.272/RF/2004, dated 6-1-2005 indicating therein that the three criminal cases instituted against the appellant had ended in his acquittal. At the same time, he opined that even though there is nothing on record to negate the appellant's claim, his criminal antecedents and the ideology of the group he is representing makes him undesirable to grant passport facility. For proper understanding of the case of the parties, the relevant portions of letter dated 6-1-2005 are reproduced below:

> "Since he is not facing any criminal charges, provisions of Sec.6(2) of the Passport Act do not apply.
>
> But the issue that need to be examined before issuing the passport i.e. the ideology he is propagating, the anti-State offence of the group he is representing and the group's proclamations against the lawfully elected Government.
>
> The possibility of his misusing the document abroad, i.e. meeting unlawful groups operating abroad with similar ideology and tarnishing the country's image by spewing venom against the elected Government in the country before like minded people cannot be ruled out completely.
>
> Though at present there is nothing as per record to negate his case, his criminal antecedents and the ideology of the group he is representing, make him undesirable for the grant of

passport facilities."

Thereafter, Respondent No.2, vide his communication dated 13-6-2005 informed the appellant that in view of the adverse report sent by respondent No.3, his file was being kept in abeyance. Aggrieved by the same, the appellant filed an appeal under Section 11 of the Act. After some time, he filed Writ Petition No.12904 of 2006 with the complaint that respondent No.1 was not deciding his appeal. The same was disposed of by the learned Single Judge on 27-6-2006 by directing respondent No.1 to decide the appeal within a period of four weeks. In the purported compliance of the direction given by the High Court, respondent No.1 passed order dated 1-8-2006, whereby he dismissed the appeal on the ground that the police and other concerned authorities have not recommended grant of passport facility to the appellant. Paragraphs 3 and 4 of that order read as under:

> "3. Accordingly, the Police and other concerned authorities were again approached and requested to give their considered views in the matter. In their inputs, the Police and other concerned authorities have not recommended grant of passport facilities to the appellant.
>
> 4. I, R.R. Dash, Joint Secretary (CPV) and Chief Passport Officer, after having carefully examined the reports received from the Police and other concerned authorities and after hearing the appellant, have decided to dismiss the appeal of the appellant."

The appellant challenged communication dated 13-6-2005 and order dated 1-8-2006 in Writ Petition No.19011 of 2006. He pleaded that the reasons assigned by respondent Nos.2 and 1 for refusing to issue the passport are legally untenable. He claimed that vide G.O.Rt.No.5607, dated 30-9-2004, the Government of Andhra Pradesh nominated him as a member of the committee constituted for

monitoring peace talks between the government and CPI (Maoist) and, therefore, the opinion expressed by respondent No.3 in his letter dated 6-1-2005 was totally unwarranted. In the counter affidavit filed by him, Sri B. Bala Bhaskar, Regional Passport Officer, Secunderabad, averred that the petitioner's application was rejected in view of the report sent by respondent No.3. In a separate counter affidavit filed by him, Sri Umesh Sharaff, the then Commissioner of Police, Vijayawada City reiterated the contents of report dated 6-1-2005 and averred that even though the provisions of Section 6(2) of the Act do not apply to the petitioner's case and there was nothing adverse on record, in view of his criminal antecedents, the ideology he was propagating and the anti-State stance of the group he is representing, there is a possibility of misusing the passport. Sri Sharaff further averred that on receipt of D.O. letter No.VIII/402/App-145/05, dated 25-11-2005 from Joint Secretary (CPV), Ministry of External Affairs, New Delhi, he sent his views on the subject vide letter dated 7-1-2006 stating that there is no legal bar for issuing passport to the applicant and the concerned authority should take appropriate decision. He also referred to the ban imposed by the State Government on CPI (Maoist) and its frontal organizations for the periods - 21-6-1992 to 20-6-1995, 23-7-1996 to 22-7-2004 and 17-8-2005 to 17-8-2007 and averred that APCLC was not banned despite the fact that it is known to be a frontal organization of CPI (Maoist).

The learned Single Judge referred to the factual matrix of the case, Sections 5(2) and (3) and 6 of the Act and dismissed the writ petition by observing that the case of the appellant falls under clauses (a) to (d) of sub-section (1) of Section 6 of the Act. The learned Single Judge opined that the Passport Authority has the discretion to refuse

passport provided that the decision taken in this regard is supported by reasons. She then held that the petitioner cannot claim passport as of right simply because he was acquitted in the criminal cases.

We have heard learned counsel for the parties and carefully scrutinised the records. The right to travel abroad has been treated as an integral part of the right to life and liberty guaranteed under Article 21 of the Constitution – **Satwanth Singh v. D. Ramarathnam, Assistant Passport Officer, New Delhi**[1] and **Maneka Gandhi v. Union of India**[2]. In the latter decision, P.N. Bhagwati, J. (as his Lordship then was), speaking for himself, Untwalia and Murtaza Fazal Ali, JJ described the inter-relation of Articles 14, 19 and 21 in the following words:

> "……The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of 'personal liberty' and there is consequently no infringement of the fundamental right conferred by Article 21, such law, in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in *R.C. Cooper's* case, *Shambhu Nath Sarkar's* case and *Haradhan Saha's* case. Now, if a law depriving a person of 'personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, *ex-hypothesi* it must also be liable to be tested with reference to Article 14……"

In his concurring opinion, V.R. Krishna Iyer, J. referred to the Universal

Declaration on Human Rights and observed:

> "We are directly concerned, as fully brought out in Shri Justice Bhagwati's judgment, with the indefinite immobilisation of the petitioner's passport, the reason for the action being strangely veiled from the victim and the right to voice an answer being suspiciously withheld from her, the surprising secrecy being labelled, 'public interest'. Paper curtains wear ill on good governments. And, cutely to hide one's grounds under colour of statute, is too sphinx-like an art for an open society and popular regime. As we saw the reasons which the learned Attorney General so unhesitatingly disclosed, the question arises: 'wherefore are these things hid?'. The catch-all expression 'public interest' is sometimes the easy temptation to cover up from the public when they have a right to know, which appeals in the short run but avenges in the long run. Since the only passport to this Court's jurisdiction in this branch of passport law is the breach of a basic freedom, what is the nexus between a passport and a Part III right? What are the ambience and amplitude, the desired effect and direct object of the key provisions of the Passports Act, 1967? Do they crib or cut down unconstitutionally, any of the guarantees under Articles 21, 19 and 14? Is the impugned Section 10, especially Section 10 (3) (c), capable of circumscription to make it accord with the Constitution? Is any part ultra vires, and why? Finally, granting the Act to be good, is the impounding order bad? Such, in the Write Petition, is the range of issues regaled at the bar, profound, far-reaching, animated by comparative scholarship and fertilised by decisional erudition. The frontiers and funeral of freedom, the necessities and stresses of national integrity, security and sovereignty, the interests of the general public, public order and the like figure on occasions as forensic issues. And, in such situations, the contentious quiet of the Court is the storm-centre of the nation. Verily, while hard cases tend to make bad law, bad cases tend to blur great law and courts must beware."

Krishna Iyer, J. then referred to the procedural safeguards enshrined in

Article 21 of the Constitution against deprivation of personal liberty and held that even though freedom of foreign travel can be fettered or forbidden by procedure established by law, but such procedure must be fair and reasonable. Two propositions which can be culled out from the judgment of Justice Iyer are:

1) The freedom of foreign travel which is included in Article 21 can be fettered or forbidden by procedure established by law. But the quality of fairness in the procedure is emphasized by the strong word "established" which means 'settled formally' not wantonly or whimsically. If it is rooted in the legal consciousness of the community it becomes "established" procedure. The compulsion of constitutional humanism and the assumption of full faith in life and liberty cannot be so futile or fragmentary that any transient legislative majority in tantrums against any minority, by three quick readings of a bill with the requisite quorum, can prescribe any unreasonable modality and thereby sterilize the grandiloquent mandate. 'Procedure established by law' with its lethal potentiality will reduce life and liberty to a precarious plaything if we do not *ex-necessitatus* import into these weighty words an adjectival rule of law, civilized in its soul, fair in its heart and fixing those imperatives of procedural protection, absent which, the processual tail will wag the substantive head. To frustrate Article 21 by relying on any formal adjectival statute, however, flimsy or fantastic its provision, is to rob what the Constitution treasures. The procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert the substantial right itself. Thus understood, "procedure" must rule out anything arbitrary, freakish or bizarre. It cannot be said to be a legal procedure if the passport is granted or refused by taking lots, or deal of fire or by other strange or mystical methods. Nor is it tenable if life is taken by a crude or summary process of enquiry. Procedure in Article 21, therefore, means fair not formal procedure. Law is reasonable law

not any enacted piece. It has been rightly pointed out that for other rights forming part of personal liberty, the procedural safeguards enshrined in Article 21 are available. Otherwise, the procedural safeguards contained in Article 22 will be available only in cases of preventive and punitive detention, the right to life, more fundamental than any other, forming part of personal liberty and paramount to the happiness, dignity and worth of the individual, will not be entitled to any procedural safeguard save such as a legislature's mood chooses.

2) Nothing right though Articles 14 and 19 is present this principle of reasonable procedure in different shades. A certain normative harmony among the articles is thus attained and Article 21 bears in its bosom the construction of fair procedure legislatively sanctioned. No passport officer shall be a mini-Caesar nor Minister Caesar incarnate. Liberty of locomotion into alien territory cannot be unjustly forbidden by the "Establishment" and passport legislation must take processual provisions which accord with fair norms, free from extraneous pressure and by and large complying with natural justice. Unilateral arbitrariness, police dossiers, faceless affiants, behind-the-back materials, oblique motives and inscrutable face of an official sphink do not fill the fairness bill subject of course to just exceptions and critical contexts. This minimum once abandoned, the Police State slowly builds up which saps the finer substance of our constitutional jurisprudence. Not party but principle and policy are the key-stone of our Republic."

We may now advert to Sections 5(2) and (3) and 6 of the Act, which have bearing on the issue raised in the appeal. The same read as under:

"5. Applications for passports, travel documents, etc., and orders thereon.-

(2) On receipt of an application by the passport authority, after making such inquiry, if any, as it may consider necessary

shall, subject to the other provisions of this Act, by order in writing,-

(a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or
(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or
(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy.

6. Refusal of passports, travel documents, etc.-
(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely :-

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;
(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;
(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely :-
(a) that the applicant is not a citizen of India;
(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;
(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;
(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India;
(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such Court;
(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest."

A reading of Section 5 (2) and (3) makes it clear that the Passport Authority has been vested with the statutory discretion to issue or refuse passport or travel document with appropriate endorsement. In the event of refusal, the Passport Authority is required to record brief statement of reasons, which have to be supplied to the person concerned, if a request is made to that effect. The Passport Authority can refuse to supply reasons if it is considered to be against the sovereignty and integrity of India or security of India or friendly relations with any foreign country or in the interest of general public. Section 6 (1) enumerates the grounds on which the Passport Authority is required to decline endorsement on the passport of a person so as to enable him to visit a foreign country. The officer concerned can do so if he is satisfied that the applicant is likely to engage in the foreign country in activities prejudicial to the sovereignty and integrity of India or his presence in that country is detrimental to the security of India or is likely to prejudice the friendly relations of India with the particular foreign or any other country. The Passport Authority can also refuse to make an endorsement for visiting any foreign country if the Central Government is of the opinion that the presence of the applicant in such country will not be in public interest. Section 6(2) lays down that the Passport Authority shall refuse to issue a passport or travel document to the applicant on any one or more of the grounds enumerated in clauses (a) to (i). The grounds specified in clauses (b) to (d) of Section 6(2) are similar to those specified in clauses (a) to (c) of Section 6(1).

In the light of the above, we shall now consider whether the reason assigned by respondent No.2 for postponing decision on the appellant's application for issue of passport and the reason assigned by respondent No.1 for refusing to issue passport are legally tenable and whether the learned Single Judge committed an error by

dismissing the writ petition.

A careful reading of letter dated 6-1-2005 sent by respondent No.3 to respondent No.2, which constitutes foundation of communication dated 13-6-2005, shows that even though the officer concerned knew that the provisions of Section 6(2) of the Act are not attracted in the appellant's case, he conveyed his opposition to the issue of passport by expressing an apprehension that the appellant may misuse the document by meeting unlawful groups operating abroad with similar ideology and tarnishing the country's image.

In the course of hearing, we asked the learned Government Pleader to show any material which could support the apprehension expressed by respondent No.3. In reply, the learned Government Pleader stated that the record made available to him does not contain any document which could support the views of the then Commissioner of Police, Vijayawada City. Therefore, it must be held that the apprehension expressed by the then Commissioner of Police, Vijayawada City about the possible misuse of passport by the appellant was totally unfounded and the report sent by him that it will not be desirable to grant passport facility to him was totally unwarranted. This conclusion of ours is fully supported by the contents of letter dated 7-1-2006 sent by respondent No.3 to the Joint Secretary (CPV), Ministry of External Affairs, New Delhi and the averments contained in paragraphs 3 and 4 of his affidavit. It appears to us that while deciding the appeal preferred by the appellant against communication dated 13-6-2005, respondent No.1 did not even bother to go through letter dated 7-1-2006, else he would not have recorded the observations contained in paragraph 3 of order dated 1-8-2006.

On the basis of the above discussion, we hold that the reasons assigned by respondent Nos.2 and 1 for declining to issue passport to

the appellant are legally untenable.

Adverting to the order impugned in the appeal, we find that the learned Single Judge did not examine the issue raised in the writ petition in a correct perspective and erroneously assumed that the appellant's case falls within the ambit of clauses (a) to (d) of Section 6(1) of the Act. While doing so, the learned Single Judge omitted to notice that it was not even the pleaded case of the respondents that after going abroad, the appellant is likely to engage in activities prejudicial to the sovereignty and integrity of India and that his presence in the foreign country is likely to be detrimental to the security of India or that his presence in the foreign country is likely to prejudice the friendly relations of India with that country. In our opinion, the material placed on the record of the case does not justify the conclusion that the appellant's case falls under Section 6(1) of the Act.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. As a consequence, the writ petition filed by the petitioner is allowed and communication dated 13-6-2005 issued by respondent No.2 and order dated 1-8-2006 passed by respondent No.1 are quashed. Respondent No.2 is directed to pass fresh order on the appellant's application within a period of 15 days from today.

As a sequel to disposal of the appeal in the manner indicated above, WAMP.No.381 of 2007 filed by the appellant for grant of mandatory interim direction to the respondents to issue passport is disposed of as infructuous.

G.S.SINGHVI, C.J.

5th March, 2007.

C.V.NAGARJUNA REDDY, J.

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[1] AIR 1967 SC 1836

[2] (1978) 1 SCC 248